IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Mat.Appeal.No. 290 of 2005()

AGAINST THE ORDER DATED 03/01/2005 IN EP. 3 /2004 IN OP.59/1999 of FAMILY COURT, KOTTAYAM

.....

PETITIONER: APPELLANT/DECREE HOLDER/PETITIONER

SUNILA GEORGE, AGED 30,
W/O.JACOB KURIAN, CHAMBALLIL,
MUTTAMBALAM KARA, MUTTAMBALAM VILLAGE,
KOTTAYAM DISTRICT.

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENT: JUDGMENT DEBTOR/RESPONDENT

JACOB KURIAN, S/O.LATE KURIAN,
ARAVINDASSERIL, KUZHITHER, AYMANAM VILLAGE,
AYMANAM KARA, OLESSA P.O.

BY //

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 06/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID,JJ.

MAT APPEAL NO. 290 OF 2005

Dated this the 6th day of December, 2007

JUDGMENT

Harun-Ul-Rashid, J.

This matrimonial appeal is filed by the decree holder-petitioner against the order dated 3.1.2005 in E.P.No. 3 of 2004 in O.P. No. 59 of 1999 on the file of the Family Court, Kottayam. The decretal portion of the judgment dated 31.5.2003 in O.P.No.59 of 1999 reads as follows:

> "In the result, O.P. allowed, declaring that Rs.Two lakhs deposited in District Co-operative Bank, Kanjikuzhy in the joint account of petitioner and 1st respondent, vide No.187 dt. 23.12.1997 exclusively belongs to the petitioner and directed the 1st respondent to surrender and co-operate with the petitioner for withdrawing the amount. The petitioner is also allowed to get articles such as Almirah, dress materials and Gas cylinder (B Sch. item) from the 1st respondent or its value Rs.42,500/-. The 1st respondent is directed to return the articles within two months from the date of decree. On failure petitioner shall realise its value."

2. Aggrieved by the non-compliance of the decree passed, the appellant - decree holder filed execution petition on 10.2.2004 seeking

recovery of Rs.42,500/- being the value of the articles stating that the judgment debtor had neither paid the amount nor surrendered the articles or co-operated with her for withdrawing the amount. The respondent - judgment debtor filed objection stating that he was always ready and willing to return the articles and that the decree holder had not taken back the articles.

3. It is seen that on 27.2.2004, the decree holder had withdrawn an amount of Rs,2,00,000/- with the co-operation of the judgment debtor. What remains is return of the articles or its value fixed at Rs.42,500/-. As per the decree, it is the duty of the respondent - judgment debtor to return the articles within the stipulated time or pay the value thereof. It is for the respondent to prove that he had returned the articles in compliance of the decree or had paid its value. Since the terms of the decree was not complied with, the court below should have granted the prayer of the decree holder for payment of the amount in lieu of the articles. The direction issued to the respondent by the court below in the impugned order to return the articles on 8.1.2005 has not been complied with. In the above circumstances, the appellant - decree holder is entitled to realise the value of the articles at Rs.42,500/- from the respondent - judgment debtor and his assets.

In the result, the appeal is allowed. The impugned order is set aside and the decree holder is allowed to realise an amount of Rs.42,500/- in terms of the decree passed in O.P. No.59 of 1999.

(KURIAN JOSEPH, JUDGE)

(HARUN-UL-RASHID, JUDGE)

sp/

KURIAN JOSEPH &
HAURN-UL-RASHID, JJ.

L.A.A.NO

JUDGMENT

4TH DECEMBER, 2007